

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
SEPTEMBER 1, 2015**

**CALL TO
ORDER
5:58 pm**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were Ole Netteberg, Mark Hash, Cal Dyck, Gina Klempel and Roger Noble. BJ Grieve, Lawson Moorman and Mark Mussman represented the Flathead County Planning & Zoning Office.

There were 8 people in the audience.

**APPROVAL OF
MINUTES
5:58 pm**

Klempel motioned and Noble seconded to approve the August 4, 2015 minutes. The motion passed unanimously.

**PUBLIC
COMMENT
(Public matters
that are within
the jurisdiction
of the Board
2-3-103 M.C.A)
5:59 pm**

None.

**IAN AND
REBEKAH
WARGO FOR
ELIZABETH
PICKAVANCE
(FZV-15-03)
5:59 pm**

A request by Ian & Rebekah Wargo, on behalf of Elizabeth Pickavance, for a zoning variance on property within the Evergreen Zoning District, zoned R-1 Planned Unit Development (PUD). The PUD from which a variance is being requested is the "River Place Subdivision Phase 3 PUD." The applicant is requesting a variance to the 20,000ft² minimum lot size requirement of the PUD to reduce the lot size of Lot 82 to 18,697ft² in order to move the lot line between Lots 81 and 82 approximately 10' to the west. The owners of Lot 81 are requesting this variance on Lot 82 (with the written approval of the owner of Lot 82) because a 10' wide pedestrian access easement that was placed on their lot at final plat is preventing them from using the small side yard of a their triangle-shaped lot for construction of a detached accessory structure (garage/shop) so they wish to purchase 10' from Lot 82. The property is located at 3083 Sweetgrass Lane.

STAFF REPORT

Grieve reviewed Staff Report FZV-15-03 for the Board.

BOARD QUESTIONS	Grieve and Netteberg discussed if the foundation was already in place for the garage, the location of the garage and the reason for the application.
APPLICANT PRESENTATION	Ian Wargo, 3095 Sweetgrass Lane, didn't have anything to add to Grieve's report and was available for questions.
PUBLIC COMMENT	None.
STAFF REBUTTAL	None.
BOARD DISCUSSION	<p>Klempel and Grieve discussed when the preliminary plat was approved which was in 2003.</p> <p>Grieve explained further of when the original and revised preliminary plats were approved.</p> <p>Netteberg stated both parties appeared to be in agreement with the request.</p>
MAIN MOTION TO ADOPT F.O.F. (FZV-15-03)	Noble made a motion seconded by Klempel to adopt staff report FZV-15-03 as findings-of-fact.
BOARD DISCUSSION	None.
ROLL CALL TO ADOPT F.O.F. (FZV-15-03)	On a roll call vote the motion passed unanimously.
BOARD DISCUSSION	None.
MAIN MOTION TO APPROVE (FZV-15-03)	Noble made a motion seconded by Klempel to approve FZV-15-03.
BOARD DISCUSSION	None.

**ROLL CALL TO
APPROVE
(FZV-15-03)**

On a roll call vote the motion passed unanimously.

**KATIE O'TOOLE
AND DARIN
ROBISON
(FCU-15-06)
6:13 pm**

A request by Katie O'Toole and Darin Robison for a Conditional Use Permit to establish a 'Camp and Retreat Center' on approximately 7.098 acres located within the Southeast Rural Whitefish Zoning District and zoned SAG-10 (Suburban Agricultural). The applicants are proposing to build three treehouses in addition to the existing residential land use and operate a 'Treehouse Retreat' open to the general public. The subject property is located at 2215 Dillon Road.

Dyck recused himself from hearing the application due to potential conflict of interest.

STAFF REPORT

Moorman passed the board handouts and reviewed FCU-15-06 for the board.

**BOARD
QUESTIONS**

Hash and Moorman discussed the property owner's easement which was being utilized by the neighbor to the south.

Noble and Moorman discussed if the applicant would need to obtain an approach permit and the increase in traffic.

Hash and Moorman discussed height restrictions in the area.

Klempel and Moorman discussed the general public use of the retreat and the difference between the application and previous applications.

Noble and Moorman discussed how many beds would be in each treehouse and if there were kitchens in the treehouses.

**APPLICANT
PRESENTATION**

Katie O'Toole, 2215 Dillon Road, applicant, said the treehouses would be single family units which would have one or two beds. There would be a small kitchen as well as a contained bathroom in each unit. They wanted this to be quality construction, not a kid's treehouse. The goal was to have it be a luxury Montana experience. They had been talking with the DIY Network and the Treehouse Masters might build the first treehouse if the permit was approved. It would be quality construction with people who were experienced with building treehouses. It was very important that they treat the neighbors with respect concerning the business because the neighbors were important to them.

The retreat would be contained with property lines made clear to visitors as well as expected noise levels.

**BOARD
QUESTIONS**

Netteberg and O'Toole discussed how many treehouses were initially planned which was one, with the other two being constructed in the future.

Noble and O'Toole discussed the estimated time of final completion for the project. The estimate was within a year if all went correctly. It would be a learning process for them.

**PUBLIC
COMMENT**

Ronald Buentemeier, 2225 Dillon Road, owned property next to the subject property. He asked the board to look at the current uses around the property. He had lived at the property for 45 years and recounted some of the changes. He would like to go back to 45 years ago however they needed to move forward. He did not have any objections to what was planned. He wanted a fence in place to stop people from trespassing on his property.

Ray Garth, 2195 Dillon Road, was concerned about how the aquifer would be affected with the additional use, the increase in traffic and how high the privacy fences would be.

Hash asked if he was in favor of the application or against it.

Garth said he was mixed in what he was in favor of and explained further.

Darin Robison, 2251 Dillon Road, applicant, currently operated Ace Landscaping. This was a dream of his to operate. If they were to construct three houses, then he would be able to stop landscaping which would be less of a nuisance to the neighbors due to the trucks and tractors related to his current business.

Kristen Eberhart, 2220 Dillon Road, was unhappy with the idea of strangers being basically in her front yard. She gave an example of how her privacy would be affected which included people out at all hours due to being on vacation and not following the rules. She also didn't feel safe on the road now with traffic. The idea sounded pleasant, but the location was horrible. It would be invasive to those who lived nearby. She was against the application.

David Eberhart, 2220 Dillon Road, reiterated the want for a different location for the business. He was concerned with

potential disturbance for his school age children with the difference between the proposed dark hours and the bedtime of his children. Things needed to progress however they wanted to have a say in how things progressed. They wanted to make sure everything was in order. His concerns also included the sign across from his house, the increase of traffic and future impact on the area.

**APPLICANT
REBUTTAL**

Robison said concerning the aquifer, normal household usage would happen but there would be no increased draw due to landscaping. They wanted to keep the setting as close to natural as possible and not disturb the existing feeling of the woods. They had no intention of building a 28 foot, lit sign, especially if it was a problem with the neighbors. They were open to changes which would accommodate the neighbors so everyone was happy. Good fencing and hedging would help alleviate the potential noise issue. He understood the concern of an increase in traffic. The welding business which shared the easement was no longer in business so traffic should be less. He also planned to exit his landscaping business so there should be a lessening of traffic.

Noble asked how long rentals would be.

Robison said they proposed weekly rentals for one family. There would be more of an impact if it was a daily rental situation.

Klempel and Robison discussed if they would be open year round. Summer months were planned to be heavier, winter with the holidays and the slower times would be in the fall and spring.

**STAFF
REBUTTAL**

Moorman clarified the sign maximum was the standards and was not necessarily how big the sign would ultimately be.

Hash and Moorman discussed the aquifer, visual screening, traffic, the size of the property and if it was possible to condition that the light and noise stay on the property.

Noble and Moorman discussed the findings which did not meet the review criteria which were findings #2, #5 and #8. They dealt with the road being a minimum of 20 feet.

**BOARD
DISCUSSION**

Klempel asked to take a moment to read the comments presented at the meeting after packets had been sent.

Hash agreed.

The board read the handout supplied by Moorman.

Hash asked the applicants to think about if the applicants did put up a sign, what size limitation they were willing to have and what lighting they would consider.

Netteberg liked the application. The project was sitting back in the trees.

Klempel felt they were putting a commercial venture in a residential setting. Most of the camps and retreats they had considered before were situated on more acreage. This was relatively small.

Netteberg said there was commercial zoning on three sides of the property.

Klempel said that was so but they were looking at something going into a place where there were more residences than commercial uses. That was how she saw it according to the drawings.

Noble asked what the duration of the permit was.

Moorman said the office inspected the property after 12 months. The permit was for the use of the property. Construction had to begin within one year.

Hash asked if the applicants would be willing to agree the rentals would not be less than weekly.

They agreed.

Hash brought up the concerns with sound, lighting and looking into neighbor's homes and asked if they would be willing to have a condition placed on the permit stating the sounds would be confined to the property to help satisfy the neighbors.

O'Toole said they would agree to that. She did not think there would be a large amount of noise. The whole purpose of the retreat center was it was a place where single families could experience the nature of Montana in a quiet setting. It would be families who would go to bed early...

Robison said he believed the question was would they do something to block the sound...

Hash said block or have restrictions on the sound.

The applicants agreed there would be noise restrictions.

Hash confirmed the applicants would consider having restrictions on the sound.

They agreed.

Hash asked if the applicants would consider restrictions on lighting.

Robison described mitigation methods already in place for sound, lighting and privacy with hedging which he envisioned continuing around the property.

Hash asked if the applicants would consider having restrictions of building the treehouses in such a manner that they did not look down into another's home and/or there would be another structure which would block the view into another's home.

The applicants agreed.

O'Toole said they did not want their guests to look into someone's home. They wanted them to feel as if they were in the middle of the woods. They did not want them to look into a neighbor's barn.

Robison said they did not want their neighbors seeing the guests either.

O'Toole said the windows would be faced to areas where they would be looking into nature. It would feel as if they were up in the trees, not looking down on someone's home.

Hash said concerning signage, what were their thoughts.

Robison said he had made a sawblade sign which was four feet in diameter, and that was a big enough sign to catch anyone's eyes. He didn't feel the sign needed to be any larger than four feet.

Hash did not want to restrict him to where he was unable to adapt with the times. Was there a height he was comfortable with?

Robison said the sign would need to be just above the hedge which would be ten feet. A sign limitation of 15 feet should work.

Hash asked if there would be lighting on the sign.

Robison said there wouldn't have to be. If the neighbors didn't want lighting, there didn't have to be. The way people would find them was through the internet. If guests were driving in the dark and the wording was reflective on the sign that would work.

Netteberg said the whole idea was it was a destination resort. The guests have already researched it. It was different than a hotel or motel.

Robison said they could have an address 2251 Dillon Road and the guests would know they were in the right place.

Klempel and Robison discussed the height of the treehouse which was no more than 35 feet.

Hash asked the members of the board their opinions on additional conditions concerning weekly rentals, sound and light staying within the confines of the property, that the treehouses were situated so they could not look into neighbor's houses and the signage has no lighting and was no higher than 15 feet.

Noble did not like the sound or noise and potentially the lighting condition because he thought it would open it up for complaints which may be unfounded. He did not know how they would be enforced.

The board discussed how to enforce any one of the conditions.

Moorman said one of the conditions which were already in the regulations and in the conditions was that the project would adhere to the applicable lighting standards. The treehouses would need to adhere to section 5.12 which dealt with the yard, street and security lighting. It discussed 'porch and yard lighting shall be hooded, screened and directed in a manner such that

the light source or the diffuser emitting the light shall not be deleterious to adjoining property owner or occupants.'

Noble had some additional suggestions for conditions and asked if the time to discuss them was now.

Hash understood what the applicants were saying, but they may decide to sell the business to someone else in the future. He truly thought they were speaking from the heart. His concern was someone else would come in and see there were no restrictions. He went on to explain concerns about noise. How could conditions be worded to protect the intent of the application? The applicants were saying they were comfortable with a condition concerning noise.

Noble said condition #10 addressed quiet hours from 10 pm to 8 am.

Hash said he was talking about all day long. They did not have anything about noise restriction concerning activities on the property. He thought even though the property had commercial uses around it, there were people next to the property who had a concern about noise and the applicants were willing to address the neighbors' needs. He was trying to find a middle ground on the issue. He asked Noble what other conditions he wanted to add.

Noble said he had three conditions. One was the Flathead City-County Health Department Environmental Health recommendation that the applicants get a public accommodation permit. Someone not knowing the steps going into a project like this, it gave them a road map to follow. The second concerned the comment from the Flathead County Weed and Parks Department. The applicants should follow up and get a soil disturbance and weed management plan. The third was the applicants limit the rental time to weekly rentals. That would help address the other concerns.

Klempel had one more concern about the applicants entertaining a locally sourced dinner for the guests. She asked if that meant catering, having someone come in and supply the dinner.

Robison said they had a very large garden and orchard. They would like to incorporate the produce into a dinner for the guests.

Netteberg said it was a harvest dinner.

The board discussed how to proceed and possible conditions.

O'Toole and the board briefly discussed what type of guests they would rent to.

The board continued to discuss wording for conditions.

**MAIN MOTION
TO ADOPT
F.O.F.
(FCU-15-06)**

Noble made a motion seconded by Netteberg to adopt staff report FCU-15-06 as findings-of-fact.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
(FCU-15-06)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board discussed at length process and how to word conditions.

The board, Mussman and Moorman discussed options for conditions concerning sound.

The board continued to discuss wording for conditions.

**MAIN MOTION
TO AMEND
CONDITIONS #
6, 7, 10, ADD
CONDITIONS #
13, 14 AND 15
APPROVE
(FCU-15-06)**

Netteberg made a motion seconded by Noble to amend condition #6 to read:

6. Any sign for the proposed camp and retreat center on the subject property shall *not exceed fifteen feet in height, shall not have any associated lighting and shall* adhere to the performance standards set forth in Section 5.11 of the Flathead County Zoning Regulations.

Condition #7 to read:

7. The proposed privacy fencing/screening shall be installed in conformance to where it is indicated on the submitted site plan, *and the structures shall be situated in such a manner as to prohibit the occupants from peering into neighboring residences.*

Condition #10 to read:

10. *Noises resulting from the operation and occupation of the camp and retreat center shall not be unreasonably disturbing to the neighborhood and Quiet hours for the camp and retreat center shall start at 10:00PM and end at 8:00 AM and be implemented seven days a week and year round.*

Add condition #13 to read:

13. *Prior to operation of the camp and retreat center a Public Accommodations license must be obtained from the State of Montana.*

Condition #14 to read:

14. *Prior to construction beginning the applicant must prepare and submit a soil disturbance and weed management plan to the Flathead County Weed, Parks & Recreation Department.*

Add Condition #15 to read:

15. *Guest stays at the camp and retreat center shall be a minimum of at least one week in duration.*

And approve.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
APPROVE
(FCU-15-06)**

On a roll call vote the motion passed 3-1 with Klempel dissenting.

**NEW BUSINESS
7:16 pm**

None.

**OLD BUSINESS
7:16 pm**

None.

ADJOURNMENT

The meeting was adjourned at approximately 7:16 pm. on a motion by Netteberg. The next meeting will be held at 6:00 p.m. on October 6, 2015.

C. Mark Hash, Chairman

Donna Valade, Recording Secretary

APPROVED AS **SUBMITTED**/CORRECTED: 12 / 1 / 15